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IN THE

Supreme Court of the United States

October Term, 1959

KUZMAN RONCEVICH,
Petitioner,

AGAINST

P. A. ESPERDY, as District Director for the New York District, Immigration and Naturalization Service, United States Department of Justice,
Respondent.

STIPE SUNJKA,
Petitioner,

AGAINST

P. A. ESPERDY, as District Director for the New York District, Immigration and Naturalization Service, United States Department of Justice,
Respondent.

JOSIP MATURA,
Petitioner,

AGAINST

P. A. ESPERDY, as District Director for the New York District, Immigration and Naturalization Service, United States Department of Justice,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

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JULES E. COVEN,
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LODER APPEAL PRESS, INC., 65 Duane Street, N. Y. C. WORTH 2-0689

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Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Petitioners pray for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit, affirming an order of the District Court for the Southern District of New York, dismissing an Order to Show Cause and an Action for Declaratory Judgment.

Jurisdiction

The Order of the Court of Appeals was rendered and entered on April 13, 1960. The jurisdiction of this Court is invoked under Section 1254 (1) of Title 28 U. S. C. and Section 1 (b) of Rule 19 of the Revised Rules of this Court as amended.

Statement of Matter Involved

The Petitioners are aliens. They are natives and citizens of Yugoslavia. They arrived in the United States as seamen. Since the date of their last entry, they have continuously resided in this Country, being unable to obtain shipping employment upon any vessel.

Subsequent to the entry of an order of deportation in the Petitioners' respective cases; each one of the Petitioners herein made an application for a stay of deportation pursuant to Section 243 (H) of the Immigration and Nationality Act of 1952, as amended (66 Stat. 212; 8 U. S. C. Section 1253 (h) (1958).) Separate denials were issued by the Respondent on the individual applications. Thereafter, each of the Petitioners commenced an action for a judgment declaring the acts of the Respondent, in denying his application, to be null and void; and directing that he be granted a stay of deportation pursuant to said Section 243 (H).

The Respondent then brought, in each of these actions, Motions for Summary Judgment. On March 28, 1960, these three matters were heard simultaneously by the Honorable Edmund L. Palmieri, who granted Respondent's Motions for Summary Judgment. Judge Palmieri denied a Motion for temporary stays of deportation pending appeal. Petitioners filed a Notice of Appeal and moved, in the United States Court of Appeals for the Second Circuit, for an order temporarily staying deportation pending the determination of an appeal to that Court. During the argument before the United States Court of Appeals for the Second Circuit, on the Motion for a Stay, the Court denied said stay and dismissed the appeal.

Questions Presented

1) Have the requirements of procedural due process been met where there is a fusion of the prosecuting and the judicial functions in the Special Inquiry Officer?

2) Has there not been an abuse of administrative discretion where individuals applying for substantially the same relief and making basically the same *prima facie* showing are treated differently?

3) Is not the denial of an application pursuant to Section 243 (H) of the Immigation and Nationality Act of 1952, improper where such denial rests solely upon the contention that the applicant failed to sustain the burden of showing physical persecution?

4) Did not the Court below err in affirming the dismissal of the action on a Motion for Summary Judgment where material and substantial questions of both law and fact are involved?

5) Did not the Court below err in dismissing the Petitioners' appeal during the argument on a Motion for a Stay of Deportation pending the determination of such appeal?

Why Certiorari Should Be Granted

Certiorari is sought so that this Court may determine and settle the question as to the propriety of the procedure and the latitude of administrative discretion permissible in the administration of Section 243 (H) of the Immigration and Nationality Act of 1952, as amended.

It is respectfully submitted that very important questions of Federal Law are presented here which should be determined by this Court as early as possible. The Section of the Immigration and Nationality Act involved herein is the sole means by which aliens in the United States may seek political asylum, and escape physical persecution because of their political and/or religious ideologies. Hence, the administration of this portion of our law affects, not only your Petitioners, but all of the thousands of aliens in the United States who are natives of the Communist dominated areas of the world.

Notwithstanding the fact that a stay of deportation, pursuant to said Section 243 (H), lies within the discretion of the Attorney General, such administrative discretion is *not* wholly exempt from judicial scrutiny, see *United States ex rel, Moon* v. *Shaugnessy*, 218 F. 2d 316 (2d Cir. 1954).

In the instant case, the Respondent argues that the question involved requires a decision as to foreign policy, traditionally left to the Executive Branch of the Government. The United States Congress, and the Department of Justice have both held that anti-Communist Roman

Catholics have a sound basis for their fear of physical persecution upon their return to Yugoslavia. The United States Department of Justice approved and favorably recommended to the Congress, which in turn, by resolution, granted applications of Yugoslavian anti-Communist Roman Catholics for adjustment of their Immigration status pursuant to Section 6 of the Refugee Relief Act of 1953 (The Act of August 7, 1953; 67 Stat. 403), which Act provided in part as follows:

> "Sec. 6. Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant and that because of events which have occurred subsequent to his entry into the United States he is unable to return to the country of his birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may, within one year after the effective date of this Act, apply to the Attorney General of the United States for an adjustment of his immigration status. * * * "

This policy was reaffirmed and has continuously been adhered to by both the United States Department of State and the Department of Justice. This is evidenced by the fact that applications, pursuant to Section 15 (A)(3)(c) of Public Law 85-316 (The Act of September 11, 1957; 71 Stat. 643), submitted to the Immigration and Naturalization Service, a branch of the Department of Justice have been approved; and in connection therewith, the Department of State has actually issued visas for permanent residence to Yugoslavian anti-Communist Roman Catholics pursuant to said Section 15 (A)(3)(c), which Section provides as follows:

"(c) (1) For purposes of subsection (a), the term 'refugee-escapee' means any alien who, because of persecution or fear of persecution on account of race, religion, or political opinion has fled or shall flee (A) from any Communist, Communist-dominated, or Communist occupied area, or (B) from any country within the general area of the Middle East, and who cannot return to such area, or to such country, on account of race, religion, or political opinion. * * * "

It is clear, therefore, that the foreign policy of the United States in regards to Yugoslavia would not be affected by the Respondent's approval of the applications submitted by the Petitioners herein. Quite to the contrary, the denial of the Petitioners' applications disregards and is in contravention of our Government's stated policy.

The Respondent, in denying the applications submitted by the Petitioners, contended that Petitioners did not sustain the burden of showing physical persecution. A denial on this basis is improper. There must be a positive finding of *no persecution* as a condition precedent to deportation. See, *Chen Ping Zee* v. *Shaugnessy*, 107 Fed. Supp. 607; *Harrisiades* v. *Shaugnessy*, 187 Fed. 2d 137.

It is obvious, therefore, that the Respondent is guilty of an arbitrary and capricious exercise of administrative discretion. Yugoslavian anti-Communist Roman Catholics have been granted administrative relief because of fear of physical persecution as a result of their religious and or political beliefs. Yet, the Petitioners herein, who are likewise Yugoslavian anti-Communist Roman Catholics have been denied administrative relief requested because of the same fears.

In addition to the abuse of administrative discretion, as set forth hereinabove, we are also confronted with an

abuse of procedural due process. The Respondent has adopted a procedure whereby one individual acts as both a prosecuting and a judicial officer at one and the same time. The Special Inquiry Officer asks a question, and in the event of an objection thereto, proceeds to rule upon such objection. Further, he rules as to the propriety of any question posed by the applicant or his counsel, as well as to the relevance of any evidentiary matter presented for submission.

The present procedure theoretically provides for the Special Inquiry Officer to act as a fact gathering agent. He is to submit all of the evidence obtained to the Regional Commissioner. The Regional Commissioner, exercising the authority delegated to him by the Attorney General of the United States, then rules upon the application. In practice, the onus is placed on the applicant, or his attorney, to produce all evidence in support of the application. The Special Inquiry Officer adopts the attitude and position of a prosecutor whose every question is posed as a challenge to the credibility of the applicant and the merit of the application.

Special Inquiry Officers were charged with conducting hearings accorded to aliens making application pursuant to Section 6 of the Refugee Relief Act of 1953, as set forth above. They must, therefore, have been aware of applications, pursuant to said Act, made by and granted to Yugoslavian anti-Communist Roman Catholics. Similarly, they must have had knowledge of the evidence submitted by such applicants to substantiate their fear of physical persecution because of their religious and or political beliefs.

Despite the fact that the Special Inquiry Officer is supposedly functioning here as an impartial fact gathering agent; and though it has been shown hereinabove that evidence in favor of Petitioners' applications were readily

available to him, the only evidence forwarded to the Regional Commissioner was that evidence introduced by the Petitioners themselves.

Thus, though in theory the procedure involved may appear to be fair and just, in fact, and in practice it is quite different.

The United States Court of Appeals for the Second Circuit erred in affirming the dismissal of Petitioners' actions on Respondents' Motions for Summary Judgment.

The Respondents' Motions for Summary Judgment must have been predicated upon a contention that neither material questions of law or fact were presented by the Petitioners.

It has been clearly shown that in the instant cases both vital questions of law and fact are involved. Thus, the Motions for Summary Judgment should have been denied as improper and the cases set down for a trial on the issues.

Finally, the United States Court of Appeals for the Second Circuit committed a reversable error in dismissing Petitioner's appeal at the termination of the oral argument, before said Court, for a temporary stay of deportation pending such appeal, when the application for said stay was the only issue then presented to the court.

Petitioners had acted timely in filing their Notice of Appeal. The statutory period allowed for the docketing of the Appeal had not expired. Petitioners had not docketed the appeal prior to the time of the Court's dismissal of same. The case on appeal technically, therefore, was not yet before the Court. Hence, the dismissal could not have been made on the merits of the case on appeal as the Court had not yet acquired jurisdiction for such purpose.

Since the Petitioners had acted properly in all procedural matters regarding the appeal; and since the appeal involved substantial questions of both law and fact it was not procedurally defective.

Though terminated prior to being procedurally completed the Appeal was procedurally correct and therefore the case on appeal was not yet before the Court for consideration on the merits. The dismissal of the Appeal must, therefore, be held improper.

WHEREFORE, in consideration of the magnitude of the questions presented and in the interest of justice, it is respectfully prayed that a Writ of Certiorari issue to the United States Court of Appeals for the Second Circuit.

Dated: New York, New York, May 9, 1960.

ABRAHAM LEBENKOFF

Respectfully submitted,

ABRAHAM LEBENKOFF and MILTON J. FREUNDLICH,
Attorneys for Petitioners.

STUART WADLER and
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No. 99

In the Supreme Court of the United States

OCTOBER TERM, 1959

KUZMAN RONCEVICH, STIPE SUNJKA AND JOSIP MATURA, PETITIONERS

v.

P. A. ESPERDY, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM RICHARD WILKEY,
Assistant Attorney General,
JEROME M. FEIT,
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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 955

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P. A. ESPERDY, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the court of appeals (R. 20)[1] is not reported. The opinion of the district court is set forth at pages 13–18 of the record.

JURISDICTION

The judgments of the court of appeals were entered on April 13, 1960 (R. 21). The petition for a writ of certiorari was filed on May 26, 1960. The juris-

[1] "R." designates the thirty-page *Roncevich* record in the court of appeals, on file with the Clerk of this Court. There is also on file a similar record for each of the other two petitioners.

diction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The Attorney General denied the applications of petitioners, who are concededly deportable aliens, for stays of deportation under Section 243(h) of the Immigration and Nationality Act of 1952. The question presented is whether petitioners, having been afforded a full opportunity to present their claims for discretionary relief, tender any reason for judicial reversal of the Attorney General's determination.

STATUTE INVOLVED

Section 243(h) of the Immigration and Nationality Act of 1952, 66 Stat. 212 (8 U.S.C. 1253(h)), provides:

> The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason.

STATEMENT

By declaratory judgment suits instituted in the District Court for the Southern District of New York, petitioners sought reversal of the determination by the Attorney General denying their requests for stays of deportation, sought under Section 243(h) of the Immigration and Nationality Act of 1952, *supra*. Each of the petitioners is a native and citizen of Yugoslavia who, having been ordered deported to Yugoslavia, claimed that he would be subject to physical persecution if returned to that country. The

government moved for summary judgments dismissing the complaints.

On March 28, 1960, District Judge Palmieri granted the government's motions for summary judgments, finding: (1) that the administrative hearings afforded petitioners, at which they were represented by counsel and given full opportunity to present their claims of persecution, fully met due process requirements and (2) that a review of the record made at the administrative proceedings revealed that the determination of the Attorney General was neither arbitrary nor capricious (R. 13–18). After filing a notice of appeal, petitioners moved in the court of appeals for stays of deportation until an appeal could be heard (R. 1–2). On April 12, 1960, the court of appeals for the "reasons stated in Judge Palmieri's opinion" dismissed the appeal and denied the motion for a stay (R. 20).[2]

The evidence presented by petitioners may be summarized as follows:[3]

1. Petitioner Roncevich, a native and citizen of Yugoslavia, first entered the United States in May or June 1941, having deserted from the vessel upon which he was then serving as a seaman. In 1943 he was deported to England and in June 1945 he re-

[2] Thereafter, on April 28 and May 10, 1960, the court of appeals issued orders staying its mandate as to each petitioner, pending the filing of a petition for a writ of certiorari (R. 29).

[3] For the convenience of the Court, we have appended the Memoranda of the Special Inquiry Officers detailing the evidence adduced at petitioners' administrative hearings and recommending that their applications for relief under Section 243(h) be denied (*infra*, pp. 10–21).

turned to Yugoslavia. Sometime in 1951 he gained employment on a Yugoslav vessel and last entered the United States in November 1952, having deserted his ship with the intention of remaining in the United States. On June 16, 1958, a warrant of deportation was issued against him for failure to comply with the conditions of his admission as a temporary seaman.

To support his claim of physical persecution, petitioner Roncevich asserted that, if deported to Yugoslavia, he would not be able to get a job because he had spoken out against Communism, and that the authorities would be very severe on him because he had deserted his ship. He further testified that a restaurant he had been running was closed by the authorities in Yugoslavia, and that he had been required to perform forced labor for two months. He admitted, however, that all able-bodied men in Yugoslavia were required to perform such labor service and that, although he had complained about Communism while residing in Yugoslavia, he had not been punished. He claimed also that as a Catholic he would be persecuted for his religious beliefs, but failed to show that he or his family had suffered any physical persecution because of church attendance.

The Special Inquiry Officer found that petitioner Roncevich's contentions as to what would occur if he returned to Yugoslavia were based on "speculation and surmise", falling far short of a showing of physical persecution, and recommended that the discretionary relief sought be denied. On November 13, 1958, the Regional Commissioner denied petitioner's request for relief under Section 243(h).

2. In September 1956, petitioner Sunjka and ten other persons left for Italy from Yugoslavia without receiving exit permits. In April 1957 he left Italy as a seaman on an English vessel which docked in Canada in June 1957. He thereafter deserted this vessel and, on July 26, 1957, illegally entered the United States by evading inspection by the Immigration Service. He is subject to a final order of deportation, based on this entry without inspection.

At the hearing, petitioner Sunjka claimed that, because he openly manifested his opposition to Communism, refused to join a collective farm group or the longshoreman's union, and adhered to Catholicism, he would be subject to physical persecution if returned to Yugoslavia. He admitted, however, that he had not been deprived of his job, or suffered any punishment while in Yugoslavia as a result of these actions. As the Special Inquiry Officer observed: "although the applicant refused to join the Communist-dominated union in Yugoslavia, although he refused to join the collective farm group, although he was considered to be an opponent of Communism, although he attended church regularly, and although he openly spoke against Communism while in Yugoslavia, * * * he was in no way physically persecuted." While prosecution might flow from his illegal departure from Yugoslavia, this fact, the Special Inquiry Officer concluded, did not warrant relief under Section 243(h). On July 7, 1958, the Regional Commissioner ordered that petitioner's application be denied.

3. Petitioner Matura, a Yugoslav seaman, last entered the United States on January 14, 1956, being admitted for shore leave only. There is an outstanding order of deportation against him based upon the fact that he has remained in this country longer than permitted.

Petitioner Matura based his claim of persecution on the ground that he had twice been discharged from his position as a seaman because of his public denunciation of Communism and his refusal to join the Communist Party. He testified, however, that on both occasions he was able to secure re-employment. He further asserted that he and his family are known as Catholics and churchgoers, but admitted that neither he nor his family had ever been imprisoned.

The Special Inquiry Officer recommended that petitioner Matura's application for a stay of deportation be denied, observing that petitioner's "testimony is not supported by any documentary evidence nor does the Yugoslav Government's past toleration of the applicant's denunciation of it support the applicant's belief that his deportation to Yugoslavia would cause him to suffer physical persecution." On June 24, 1958, the Regional Commissioner denied his application for relief under Section 243(h).

ARGUMENT

Petitioners have been adjudged deportable aliens and they do not deny the correctness or propriety of these administrative determinations. They challenge only the refusal of the Attorney General to grant them relief from deportation under Section 243(h)

of the Immigration and Nationality Act of 1952, *supra*, p. 2. Their basic contention (Pet. 4–8) is that the decision of the Attorney General denying them relief from deportation was arbitrary and capricious. This contention is without merit.

The proceeding under Section 243(h) is completely unrelated to the issue of the alien's right to remain in the United States. Instead, relief under Section 243(h) is a privilege to be granted a deportable alien when, in the "opinion" of the Attorney General, deportation would subject the alien to physical persecution. Thus, the hearing provided under Section 243(h) is not the classic administrative kind in which the hearing officer may be upheld in his decision only if there is substantial evidence to support it. The Attorney General, having been "advised by the alien as to the basis of his fears" (*Namkung* v. *Boyd*, 226 F. 2d 385, 388 (C.A. 9)), decides a "political issue in which the courts should not intrude." *United States ex rel. Dolenz* v. *Shaughnessy*, 206 F. 2d 392, 395 (C.A. 2); see *United States ex rel. Cantisani* v. *Holton*, 248 F. 2d 737 (C.A. 7) certiorari denied, 356 U.S. 932; *Cheng Fu Sheng* v. *Barber*, 269 F. 2d 497, 500 (C.A. 9). Because of the nature of the issues involved in such a proceeding, the courts have uniformly refused to disturb a determination adverse to the alien unless "the Attorney General or his delegate should deny the alien any opportunity to present evidence on the subject of persecution or should refuse to consider the evidence presented by the alien." *United States ex rel. Dolenz* v. *Shaughnessy*, *supra*, 206 F. 2d at 395; see *United States ex rel. Moon* v. *Shaughnessy*,

218 F. 2d 316, 318 (C.A. 2); *United States ex rel. Cantisani* v. *Holton, supra,* 248 F. 2d at 738–739; *Cakmar* v. *Hoy,* 265 F. 2d 59, 62 (C.A. 9).

Application of these settled principles to this case makes clear that petitioners have no basis for attacking the Attorney General's determination. Each, represented by counsel of his own choice, was granted an administrative hearing at which full opportunity was afforded to present all evidence in support of his claim. And the evidence so submitted was carefully considered by the authorized delegate of the Attorney General before petitioners' requests were denied.

The sum of it is that the evidence submitted by petitioners fell short of that required to establish their claims of persecution (see the Statement, *supra,* pp. 3–6). As Judge Palmieri stated: "* * * a thorough review of the administrative files reveals no evidence that [petitioners] or their families have been physically persecuted for their political or religious activities in Yugoslavia" (R. 17). There is no basis for further review in this Court.[4]

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[4] Petitioners' other contentions are also clearly erroneous. Contrary to petitioners' claim (Pet. 6–7), the Special Inquiry Officer is not a prosecutory official—that is, an official who has already taken a position prior to the hearing. Instead, he acts merely to hear the evidence presented by the alien to sustain his claim for discretionary relief and then to recommend a decision to the designee of the Attorney General. 8 C.F.R. 243.3 (b). Since the Inquiry Officer must make a recommendation, it is obviously necessary that he ask questions going to the credibility and substantiality of the evidence presented.

Petitioners further claim (Pet. 8–9) that the court below was without jurisdiction to dismiss their appeal because they were before that court only on the limited question of whether stays

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solcitor General.

MALCOLM RICHARD WILKEY,
Assistant Attorney General.

JEROME M. FEIT,
Attorney.

JUNE 1960.

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of deportation should be issued pending appeal. Since however, a notice of an appeal had been filed by petitioners, the court of appeals had jurisdiction of the cause and could lawfully exercise its authority to dismiss the appeal. See 28 U.S.C. 2106.

APPENDIX

United States Department of Justice

Immigration and Naturalization Service

New York District

File No. A10258798

MEMORANDUM AND RECOMMENDATION OF THE SPECIAL INQUIRY OFFICER

In the Case of

JOSIP MATURA

Applicant for Relief Under Section 243(h) of the Immigration and Nationality Act

In behalf of applicant: Mr. Irving Novick, 11 West 42nd Street, New York, New York.

DISCUSSION: The applicant is a 44-year-old married male, an alien, a native and citizen of Yugoslavia, who last entered the United States at the port of New York, New York on January 14, 1956 as a member of crew of the Steamship Biokovo, being admitted under Section 101(a)(15) of the Immigration and Nationality Act for shore leave only. He is now the subject of an outstanding order of deportation based upon the fact that he remained in the United States longer than permitted. He has filed application for withholding of deportation to Yugoslavia pursuant to Section 243(h) of the Immigration and Nationality Act.

He has testified that he started sailing the seas in 1928 and pursued his calling as a seaman until 1939. However, he was in the Yugoslav Armed Forces from 1935 to 1936. He was ashore in Yugoslavia from 1939 to 1948 and commenced sailing again in 1948 and continued to sail until his last entry to the United States in 1956. He entered the United States for the first time in June of 1955 and left with his vessel within a period of about four days. The vessels on which he sailed flew the Yugoslav flag. From 1948 until his last entry he made about four round trips a year to and from Yugoslavia. During this period of time his total period of physical presence ashore in Yugoslavia approximated one month a year.

It is his testimony that in about March of 1953 he was asked to join the Communist Party and refused to do so and in refusing made statements adverse to the Yugoslav Communist Government and to the Communist Party and as punishment for this refusal and denunciation he was discharged and remained ashore for about three months after which, with the aid of some good friends, he was able to secure employment again on Yugoslav vessels.

In February of 1955 he was once again discharged because of a renewed refusal to join the Communist Party of Yugoslavia and because of renewed denunciations of conditions of Yugoslavia. He stated that once again, through the help of friends, he secured employment on Yugoslav vessels. He testified that since entering the United States he has "denounced" the Communist Party of Yugoslavia and the Yugoslav Government in conversations with fellow employees, such denunciation being substantially that which he uttered in 1953 and in 1955. He has expressed the fear that because he refused to join the Communist Party on two occasions and denounced

that Party thus losing his employment and because he has, since coming to the United States, made a similar denunciation that deportation to Yugoslavia would cause him to suffer physical persecution. He believes that that persecution would consist of his being imprisoned for life and might even consist of his losing his life. He fears that his family too would be imprisoned. He claims to have in the United States an uncle and two distant cousins. In Yugoslavia he has a wife, two sons, a married daughter and his in-laws. He has admitted that his family attend church regularly and that he too attended church regularly but because of his belief that church-going was frowned upon by the Yugoslav Government, he himself attended a church in a neighboring community. It is his testimony that in that his family is known to be a church-going group they were bothered by being asked to join the Communist Party but that they have resisted ch request. Neither he nor any member of his family have ever been imprisoned. The applicant has the burden of proof in this proceeding. He has admitted that although on two occasions he refused to join the Communist Party of Yugoslavia and denounced the Government of Yugoslavia, the only result of such action was temporary loss of a job on a Yugoslav flag vessel. He expresses the belief that a third denunciation made to friends and fellow employees in the United States would be the catalytic agent which would cause the Yugoslav Government to punish him for his repeated denunciations by imprisoning him for life. His testimony is not supported by any documentary evidence nor does the Yugoslav Government's past toleration of the applicant's denunciation of it support the applicant's belief that his deportation to Yugoslavia would cause him to suffer physical persecution. The appli-

cant has failed to establish the merit of his case. His application to withhold deportation to Yugoslavia will therefore be denied.

RECOMMENDATION: Upon consideration of the entire record it is recommended that the application to withhold deportation to Yugoslavia under Section 243(h) of the Immigration and Nationality Act be denied in that the applicant has failed to establish that he would be subject to physical persecution if so deported.

WILLIAM FLIEGELMAN,
Special Inquiry Officer.

WF/mje
JUNE 24, 1958.

Upon consideration of the entire record, including the exceptions filed, we find that the exceptions are without merit and that the application should be denied.

So ordered.

/s/ H. R. LANDON.

United States Department of Justice

Immigration and Naturalization Service

New York, N.Y.

File A-8836971

MEMORANDUM AND RECOMMENDATION OF THE SPECIAL INQUIRY OFFICER

In the Case of

STIPE SUNJKA

Applicant for Relief under Section 243(h) of the Immigration and Nationality Act

In behalf of Applicant: Philip Strauss, Esq., 1 East 42 Street, New York 17, N.Y.

The applicant is a 38 year old married male, an alien, a native and citizen of Yugoslavia, who last entered the United States in the vicinity of Rouses Point, New York, on or about July 26, 1957, by evading inspection by the Immigration and Naturalization Service. He is now the subject of an outstanding final order of deportation, based upon the fact that he entered the United States without inspection. He has filed application for withholding of deportation to Yugoslavia pursuant to Section 243(h) of the Immigration and Nationality Act.

The applicant contracted marriage in Yugoslavia in 1941, and of this relationship there have been born two female and one male child, eleven, nine and six years of age, respectively. His children reside with his wife in Yugoslavia, and are supported by the fruit of the ancestral farm and by the sum of $40 a month which the applicant sends to them for their maintenance.

In the United States, the applicant claims to have two uncles, an aunt, and four cousins, all of whom are citizens of the United States. He has testified that he has no other relatives anywhere in the world. His education consists of six years elementary schooling in Yugoslavia. His military service consists of two months service with the Yugoslav armed forces as a private in 1941.

From the time of the applicant's birth until 1947, he resided on the family farm and earned his livelihood, and the livelihood of his family by working that farm, sometimes supplementing such livelihood by a fishing trip. From 1947 until 1956, the applicant, although he continued to reside on that farm, was employed during the day as a longshoreman on docks which were not distant from the farm. Employment as a longshoreman was considered to be employment by the Government.

In 1956, he and ten other persons embarked in a fishing vessel for Italy, leaving Yugoslavia without receiving exit permits. He arrived in Italy in September of 1956, and resided there for approximately nine months, being supported by the bounty of others. In April of 1957, he obtained employment as a seaman on an English flag vessel as a helmsman, and proceeded on that vessel to Venezuela, and from there to Canada. On arrival in Canada in June of 1957, he and three others deserted the vessel with the intention of remaining permanently in Canada, or, if successful in entering the United States, of ultimately remaining in the United States. The applicant remained in Canada for a period of only approximately twenty days, and then entered the United States by evading inspection by the Immigration Service. Since entering the United States, he has been employed as a porter in a bakery and has a take-home pay of $58

a week. He has saved from his earnings approximately $500. He has testified that while in Yugoslavia he and the members of his family attended church regularly, being devout Roman Catholics, and has testified that his attendance at church was a matter of common knowledge. It is also his testimony that in 1947, in connection with his employment as a longshoreman, he was asked to join the longshoremen's union, and refused to do so. In 1948, he was asked to join a collective farm group and refused to do so. He has acknowledged that his employment as a longshoreman was a position under the control of the Government of Yugoslavia. Although he refused to join the union, and refused to join the collective farm group, and although he was known to be a churchgoer, he was not deprived of his employment as a longshoreman, nor was any other punishment visited upon him. The easier and more desirable jobs were, however, allocated to members of the Communist Party, rather than to non-Communists.

He has testified that he was never asked to join the Communist Party of Yugoslavia because he was known to oppose Communism. He has expressed the belief that because he was known to oppose Communism, and because he was a churchgoer, and because he manifested his opposition to Communism and to the Yugoslav Communist government by refusing to join the collective farm group, and by expressing his opposition to Communism openly, and because he finally fled Yugoslavia without receiving permission from either country, that deportation to Yugoslavia would result in physical persecution to him. He has stated that that persecution would consist of arrest and imprisonment for an indefinite number of years, ranging from ten years to life imprisonment. He acknowledges that his estimation of the period of

imprisonment is speculation on his part, and whether or not he so acknowledges, consideration of the entire record in this case establishes that it is sheer conjecture on the applicant's part.

It is significant that although the applicant refused to join the Communist-dominated union in Yugoslavia, although he refused to join the collective farm group, although he was considered to be an opponent of Communism, although he attended church regularly, and although he openly spoke against Communism while in Yugoslavia, that he was in no way physically persecuted. The applicant's own testimony refutes his claim that physical persecution would flow from these acts. The only fact not previously considered by the Yugoslavs in connection with the applicant is the fact that he illegally left the country. It may well be that prosecution for illegal departure might flow from this. However, it could hardly be stated that such prosecution would be the physical persecution contemplated by Section 243(h) of the Immigration and Nationality Act. It has not been established on this record that deportation to Yugoslavia would result in physical persecution to the applicant. His application will be denied.

RECOMMENDATION: Upon consideration of the entire record, it is recommended that the application to withhold deportation to Yugoslavia under Section 243(h) of the Immigration and Nationality Act be denied, in that the application has failed to establish that he would be subject to physical persecution if so deported.

WILLIAM FLIEGELMAN,
Special Inquiry Officer.

WF/may

JULY 7, 1958.

Upon consideration of the entire record, including the exceptions filed, we find that the exceptions are without merit and that the application should be denied.

So ordered.

/s/ CHARLES C. DAVIE,
Regional Commissioner.

United States Department of Justice

Immigration and Naturalization Service

New York District

File No. A9 123 686

MEMORANDUM AND RECOMMENDATION OF THE SPECIAL INQUIRY OFFICER

In the Case of

KUZMAN RONCEVICH

Applicant for Relief under Section 243(h) of the Immigration and Nationality Act

In behalf of Applicant: Philip Strauss, Esquire, 1 East 42nd Street, New York, New York.

DISCUSSION: Applicant is a 48-year-old married male alien, a native and citizen of Yugoslavia, who last entered the United States, November 2, 1952 at Philadelphia, Pennsylvania. He was then admitted as a seaman for a temporary period of time. On June 16, 1958 a warrant of deportation was issued against the applicant as an alien who failed to comply with the conditions of his admission as a temporary seaman. The application for the relief requested herein was filed on June 16, 1958.

Applicant was born in Lukoran, Yugoslavia on October 27, 1909. His father Ivan, died in 1915. His mother Shimica nee Masar died in his native village in 1950. He has three brothers and two sisters. Ante, who was born in 1900 and Emil, born in 1906, are alleged by the applicant to be living somewhere in Philadelphia. Applicant claims that they are United States citizens. His brother, Krsto, born 1915, still resides in their native village. This brother is now employed as a seaman. His sister, Milica, born in 1904, is alleged to be a United States citizen living somewhere in Philadelphia. The remaining sister, Josita, born in 1912, has been in Italy since about 1924. She now lives in Cremona, Italy.

In 1936 the applicant was married to Josica Baric. They have five children. Ante, born 1937; Sonja, born 1939; Senka, born 1946; Biserka, born 1948 and Zeljko, born 1950. Ante is in the Yugoslav Army. The others live with their mother in applicant's native village. The applicant still owns a vineyard and three room house in his native village. He claimed that the land is stony and useless. His wife and children live in the house, which is a two story structure.

From 1917 to 1920, the applicant attended elementary school. Thereafter he was at home until 1925 when he took employment on Yugoslav coastal vessels. About 1929 he began to sail foreign. From 1930 to 1932 he was in the Yugoslav Navy. Commencing in 1932 he sailed foreign on Yugoslav vessels until 1940. At this time he signed on a Panamanian vessel. On the occasion of his first entry into the United States in May or June 1941 he deserted and remained ashore. About April or May 1943 he was deported to England. He remained in England until 1945. During this period he refused to take employment as a seaman on Yugoslav or other foreign vessels. He returned to Yugoslavia about June 1945. He remained with his

family for about 2 months and then went to Zadar, Yugoslavia, where he operated a restaurant until about 1947. About the winter of 1947 he started to work in hotels in Zadar. About the winter of 1948 he went to work at the Hotel Espanada in Zagreb, Yugoslavia, Starting about the winter of 1950 he sailed coastwise as a seaman on Yugoslav ships. Sometime in 1951 he commenced sailing foreign on Yugoslav vessels. Between that date and November 1952, when he last entered he made two arrivals in the United States but was not given shore leave. He was last in Yugoslavia in the fall of 1952.

Applicant was never arrested for any violation of law. He testified he did not have any affiliation with any political organization anywhere. He alleged without corroboration that he was forced by governmental order to close his restaurant in 1947 and that in 1946 he was compelled to perform forced labor for two or three months. The latter labor was the result of the Yugoslav five year plan which required all able bodied men in Yugoslavia to contribute similar services. The record shows no evidence that either the applicant or his family were otherwise inconvenienced in Yugoslavia.

It is alleged by the applicant in this proceeding that if he returns to Yugoslavia he will be persecuted in that he would not be given a job and would be punished for the 1952 desertion of his vessel in the United States and also that he might be imprisoned for speaking against the Communists. The fact that salaries are low and employment opportunities are bad in Yugoslavia does not constitute persecution. Desertion is a crime in Yugoslavia. Punishment for this violation of the internal law of Yugoslavia is not persecution. Applicant testified that between 1945 and 1952, while in Yugoslavia, he complained about the economic and political conditions in that country,

yet suffered no sanctions by the government. He also attended the Catholic Church while in Yugoslavia. There is no proof that this latter fact resulted in prejudicial action against the applicant by that government. That his wife would prefer him to remain in the United States so that he could more liberally contribute to the family unit in Yugoslavia is understandable. The interest of the Yugoslav authorities as to whether the applicant has returned is a police matter. Neither of these facts can possibly be deemed to constitute a ground for fear of physical persecution on the ground of race, religion or political opinion.

Applicant's allegations as to what would ensue, if he were to return to Yugoslavia, is based on speculation and surmise. At the most, his testimony and the letter from his wife reflects certain discriminatory practices in Yugoslavia. These fall far short of the physical persecution required under Section 243(h) of the Immigration and Nationality Act. Upon consideration of the entire record it is concluded that the applicant has failed to establish that he will be subject to physical persecution if deported to Yugoslavia. His application must therefore be denied.

RECOMMENDATION: It is recommended, upon consideration of the entire record, that the application to withhold deportation to Yugoslavia under Section 243 (h) of the Immigration and Nationality Act be denied in that the applicant has failed to establish that he would be subject to physical persecution if so deported.

JOSEPH J. MACK,
Special Inquiry Officer.

JJM/mje

BURLINGTON, VERMONT, *November 13, 1958.*

So ordered.

/s/ H. R. LANDON,
Regional Commissioner.

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